

REMARKS

Claims 8, 9, 14 and 17 are being cancelled without prejudice to filing in a later application. Claims 1-3, 5-7, 11-13 and 15 are being amended. No claims are being added. Upon entry of this amendment, claims 1-7, 10-13, 15-16 and 18-20 will be pending in the application.

The amendment to claim 1 clarifies which mixture is recited and adds that the small molecular ingredients comprise flavonoids, polyphenols or baicalein. The Examiner previously indicated that these small molecules were disclosed and supported by the as filed specification.

The amendment to claim 2 clarifies that the method therein further comprises the recited steps. This amendment is supported by the specification at, for example, page 3, lines 18-28.

The amendment to claim 3 is supported by the specification at, for example, page 3, line 29 *et seq.*

The amendment to claim 5 fixes the grammatical disconnect identified by the Examiner.

The amendment to claim 6 clarifies the relationship of the solvents used therein.

The amendment to claim 7 identifies the processing technologies that may be employed. This amendment is supported by the as filed specification at page 4, paragraph 4.

The amendment to claim 11 changes dependency of that claim.

The amendment to claim 13 clarifies that the method therein further comprises the step of cooling the pressure container. This amendment is supported by, for example, this claim as filed.

This amendment is being filed under 37 C.F.R. 1.116 governing amendment after final rejection. This amendment is appropriate for entry under Rule 1.116 since it reduces the number of pending claims, does not raise new issues and places the application in allowable condition and/or places the application in better form for consideration of appeal.

In the event that the Examiner refuses to enter the amendment to claims 1-7, 10-13, 15-16 and 18-20, Applicant respectfully requests that the Remarks concerning the non-amended claims be considered.

The rejection of claims 1-20 under 35 U.S.C. §112, first paragraph for failure to comply with the written description requirement.

The Official communication asserts that claims 1-20 contain subject matter that was not described in the specification.

The Office communication admits on page 3 that Applicant's specification discloses 3 small molecular ingredients that could be extracted by the claimed method. The Office communication later identifies these small molecular ingredients as flavonoids, polyphenols or baicalein.

Applicant's claims have been amended to recite in one part: "A process of extracting small molecular ingredients with molecular weight lower than 10,000 . . . wherein the small molecular ingredients comprise flavonoids, polyphenols or baicalein.

The Office communication admits that Applicant's specification discloses a process of extracting the claimed small molecular ingredients. Applicant's amended claims are disclosed in their specification in compliance with section 112, first paragraph. This rejection is obviated.

The rejection of claims 1-20 under 35 U.S.C. §112, first paragraph for lack of enablement.

The Official communication asserts that claims 1-20 contain subject matter that is not enabled in the specification.

The Office communication admits on page 3 that Applicant's specification discloses 3 small molecular ingredients that could be extracted by the claimed method. The Office communication later identifies these small molecular ingredients as flavonoids, polyphenols or baicalein.

Applicant's claims have been amended to recite in one part: "A process of extracting small molecular ingredients with molecular weight lower than 10,000 . . . wherein the small molecular ingredients comprise flavonoids, polyphenols or baicalein.

The Office communication admits that Applicant's specification is enabled for a process of extracting the claimed small molecular ingredients. Applicant's amended claims are enabled by their specification in compliance with section 112, first paragraph. This rejection is obviated.

The rejection of claims 2-3, 5-9, 11 and 12-19 under 35 U.S.C. §112, second paragraph.

The Official communication asserts that the claims 2-3, 5-9, 11 and 12-19 are indefinite.

Claims 8-9, 14 and 17 have been cancelled without prejudice obviating this rejection with respect to these claims.

Claims 2 and 13 have been amended to clarify that the method therein further comprises the recited steps.

Claims 2 and 12 have been amended to clarify which mixture is referred to therein.

Claim 5 has been amended to fix the grammatical disconnect identified by the Examiner.

Claim 6 has been amended to clarify the relationship of the solvents used therein.

Claim 7 has been amended to identify the processing technologies that may be employed.

Claim 11 has been amended to change dependency so that "the medium" has antecedent basis.

Claims 15-16 have been amended to clarify the relationship of the pressure container and cooler. Claim 15 ends with a period.

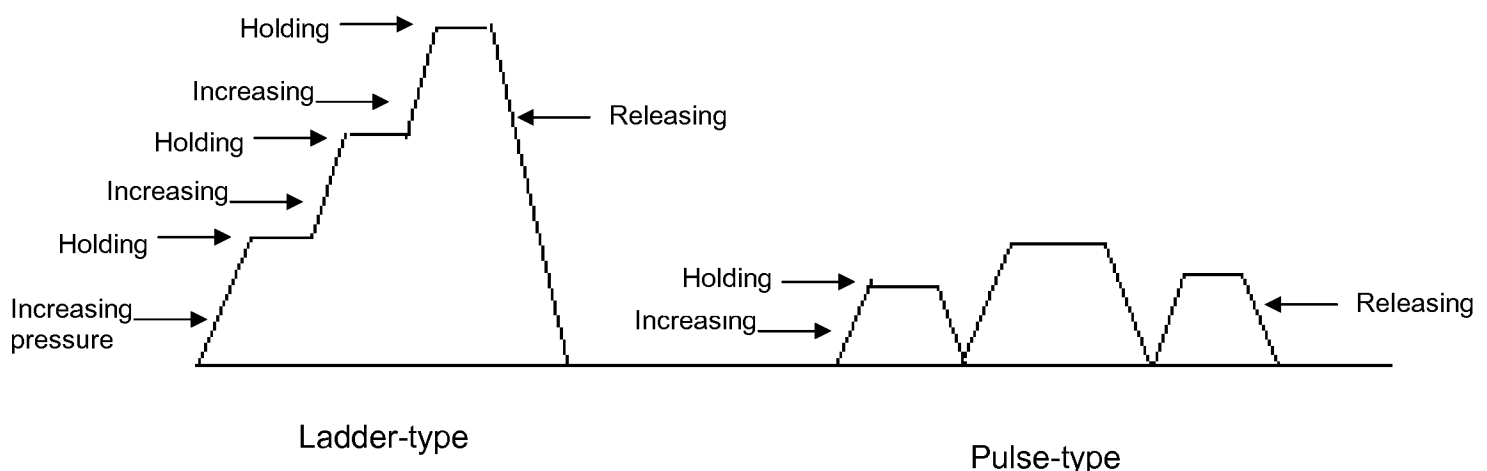
The rejection asserts that the term "charging" has not been adequately defined.

The term “charging” is not found in the claims. This rejection is respectfully traversed.

Claims 8, 11 and 17 were asserted to be too confusing, vague and indefinite for the Examiner to interpret. Claims 8 and 17 have been cancelled without prejudice obviating this rejection. Claim 11 has been amended to change dependency and is now definite.

Claims 3 and 18-19 were asserted to be confusing because of the recitation of the phrases “done in steps” or “performed in steps”. Claim 3 has been amended and no longer recites either of these phrases.

Claim 18 recites that the step of increasing pressure is performed in steps. Claim 19 recites that the step of releasing pressure is performed in steps. Applicant’s specification at page 3, line 29 *et seq.* recites: “The steps of increasing pressure, holding pressure and releasing pressure can be finished in one or several steps. If finished by several steps, it can be done as the following: . . .” That section goes on to disclose increasing pressure in steps using a ladder-type method and a pulse-type method. Example 3 also discloses increasing pressure in steps using a pulse-type method. Increasing pressure in steps can also be illustrated schematically as shown below.



Applicant asserts that the phrase “performed in steps” is clear and definite to a person of ordinary skill in this art in view of their specification and respectfully traverse

this rejection of claims 18 and 19. Claims 2-3, 5-7, 11-13 and 18-19 are in condition to overcome this rejection.

The rejection of claims 1-3, 6, 10-13 and 17-19 under 35 U.S.C. §102(b).

Claims 1-3, 6, 10-13 and 17-19 were rejected under 35 U.S.C. §102(b) as having each and every feature and interrelationship anticipated by Japanese reference JP04244203.

The JP 04244203 abstract does not appear to teach or disclose at least a process of extracting flavonoids, polyphenols or baicalein. Claims 1-3, 6, 10-13 and 17-19 are not anticipated by the JP 04244203 reference and are patentable for at least this reason.

As explained to Applicant's U.S. representative (without translation) the JP 04244203 reference discloses heating in paragraph 0027 of the description. The work temperature is preferable from 40 °C to 60 °C. All the examples in the JP 04244203 reference are carried out at 50 °C. The process of Example 1 comprises pressurizing at 50 °C under 800 MPa for 60 min. The process of Example 2 is similar to that of Example 1 but the solvent and the acid for neutralizing are different.

The presently claimed invention is carried out at a temperature within five degrees of room temperature (See Claim 1). Applicant respectfully traverses this rejection. Claims 1-3, 6, 10-13 and 17-19 are not anticipated by the JP 04244203 reference for at least this additional reason.

The rejection of claims 1-20 under 35 U.S.C. §103(a).

Claims 1-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Japanese references JP 04244203, JP 09140337 and JP 04256405.

- **The legal burden necessary to properly assert a 35 U.S.C. §112, first paragraph rejection.**

As stated in MPEP §2143, to establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

- **The cited references fail to teach the claimed invention.**

The cited references do not appear to teach or disclose at least a process of extracting flavonoids, polyphenols or baicalein.

- **The claimed process is not obvious in view of the cited references.**

In the section 112, first paragraph rejection of this application the Examiner has taken the position that enablement in this art requires substantial disclosure. None of the cited references appear to suggest at least a process of extracting flavonoids, polyphenols or baicalein.

Claims 1-20 are not obvious over Japanese references JP 04244203, JP 09140337 and JP 04256405 and are patentable for at least these reasons.

Appl. No.: 10/500,531

Response to Office communication dated: 1/29/2007

Attorney Docket: LUNGBJ/105/PC/US

In summary, Applicants have addressed each of the objections and rejections within the present Office Action. It is believed the application now stands in condition for allowance, and prompt favorable action thereon is respectfully solicited.

The Examiner is invited to telephone Applicant's attorney at 860.527.9211 if it is deemed that a telephone conversation will hasten prosecution of this application.

Respectfully submitted,

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